* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: October 22, 2009
Date of Order: November 09, 2009

+CCP 77 of 2001 & 46 of 2002 in CS(OS) 2836 of 2000

% **09.11.2009**

St. Ives Laboratories Inc. ...Plaintiff
Through: Mr.S.K. Bansal, Advocate

Versus

Lotus Herbals UK Ltd. ...Defendants
Through: Mr. Mohan Vidhani, Mr. Rahul Vidhani & Mr. O.P.Bansal, Advocates for R-1-4 in CCP 77 of 2001, Advocates

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the reporter or not?

3. Whether judgment should be reported in Digest?

ORDER

1. The plaintiff had filed a suit No.2836 of 2000 which was disposed of vide order dated 27th April, 2001 by this Court on the basis of written statement filed by the defendant, who in the written statement stated that it will not use the disputed label which looked similar to that of plaintiff and defendant proposed to use a different label which was annexed as R-1. This Court observed that label R-1 did not appear to be similar or deceptively similar to the label being used by plaintiff and therefore there could be no objection if the defendant used label R-1. This Court also observed that in view of written statement of defendant nothing survived in the suit and disposed of the suit in view of statement made by defendant that the impugned label shall not be used. No decree was passed in favour of plaintiff neither an injunction was issued by order dated 27th April

2001. The record also shows that appellant/plaintiff preferred an RFA 25 of 2001 against that order and obtained an ex parte stay against defendant permitting the defendant to use Annexure-R-1 as its label.

2. After the suit was disposed of on 27th April 2001, the plaintiff made a petition under Contempt of Courts Act on 11th July 2001 alleging that the defendant was still using the earlier label. A local commissioner was appointed on application of the plaintiff who visited the manufacturing unit of defendant and seized 78 bottles, which plaintiff alleged to be deceptively similar to its trademark/label of plaintiff and handed over the same on superdari to defendant. Thereafter, plaintiff preferred a second contempt petition and in view of the report of local commissioner, it is pressed that defendant be punished under Contempt of Courts Act.

3. Section 2 sub Section (b) of the Contempt of Courts Act defines civil contempt which reads as under:-

> **"2. Definitions -** In this Act, unless the context otherwise requires -
>
> (a) "Contempt of court" means civil contempt or criminal contempt"
>
> (b) "Civil contempt" means willful disobedience to any judgement, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court.
>
> Xxxxxx"

4. It is obvious that in order to constitute a civil contempt there must be a judgment, decree, directions, order, writ given by the Court of which breach is committed or there must be an undertaking given to the Court by a person which is willfully breached.

5. In the present case, this Court did not pass any judgment in favour of plaintiff and

against defendant nor decreed the suit of plaintiff nor given any directions to defendant nor passed an order in favour of plaintiff or against defendant nor issued any writ nor an undertaking of defendant was recorded. On the basis of written statement made by defendant that defendant will discontinue the use of impugned label, the suit was disposed of. In case plaintiff found that the defendant had made false statement in the W.S. and the cause of action still survived, the only remedy available with the plaintiff was to get the suit revived and obtain an order of injunction from the Court. However, no effort was made by plaintiff for getting the suit revived and plaintiff filed the present applications for contempt. Section 9 of the Contempt of Court Act provides that nothing contained in the Act is to be construed to imply that a disobedience or breach of some act is punishable under the Contempt of Courts Act which was not be so punishable apart from the Act. Thus, all disobediences are not covered under the Contempt of Courts Act. Only those disobedience are covered under Contempt of Courts act which are specifically provided under the Act. Thus, in order to constitute a civil contempt, there must exist a judgment, decree, direction, order, writ or a process of the Court or there should be an undertaking given by the defendant to the Court. Since in this case the ingredients of Section 2(b) of the Contempt of Courts Act were lacking and no order, decree or directions existed, present applications under Contempt of Courts Act would not lie. I find no force in these applications/ petitions filed under Contempt of Courts Act. The petitions are hereby dismissed.

November 09, 2009 **SHIV NARAYAN DHINGRA J.**
rd